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ABSTRACT

This paper addresses international issues and problems raised by the impacts of technology that may result in new legislation which, in turn, may affect the operations and services of libraries. Areas of international concern for libraries include increased information flow, greater dependence on information and communication services, information privacy rights and data security, national sovereignty, exportation of highly skilled data processing potential, copyrights and record ownership, data sharing and networking, and increased cost of information resources. (CMV)

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THE IMPACT OF TECHNOLOGY ON LEGISLATION AFFECTING LIBRARIES

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Prepared for the 1979 IFLA Conference
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I have chosen to concentrate on the legislative aspects of the conference theme, "Library Legislation and Management," by discussing some of the issues raised by the technology which may result in legislation which in turn may affect the operations and services of libraries.

I shall address aspects of the problem which are international in nature, that is, issues with which both the developed and developing countries are concerned in varying degrees. The orientation of IFLA toward Universal Bibliographic Control (UBC), Universal Availability of Publications (UAP), and the International MARC Program (IMP) indicates a deep international involvement in information and its technology on the part of IFLA's membership.

We are now challenged by an information environment of massive volume and complexity characterized by an exponential increase in information flow, decreasing communications time and distance constraints, and greater dependence on information and communication services. The result is a rapidly diminishing time buffer between technical development and social change.

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The globe has shrunk and the information problem has gone international. The marriage of the computer with the technologies of communication has created a period in our history which rightfully can be called a revolution and marks the beginning of the information age.

Information is now recognized as a commodity and a national resource which must be protected and cultivated. Thus, both nationally and internationally, considerations concerning the sale, exchange, lease and/or give-away of data are receiving increased attention. National laws are being enacted which will govern the flow of information made possible through the technology. Libraries, which are major processors and distributors of information, could be seriously impacted by legislation which would regulate the free flow of information or which would impose tariffs, thus affecting the economics of information transfer. It is therefore appropriate in this setting to review some of the major problems caused by the technology.

Prior to technological advances of recent decades, information was transmitted internationally principally in printed form and, in this form, was subject to both review and control. Naturally, there always existed ways to surreptitiously carry information from one place to another by passing inspection, but in general, a book, a letter, a business record, was human readable and, although subject to photocopy, the photocopy was also human readable and therefore subject to review and control if required. All this has changed.

It is no longer science fiction to portray a man at a terminal in Paris dialing a computer in the United States to request information, or a multinational corporation with staff dispersed worldwide in continuous communication with one another and with their respective computers. With the merging of the two technologies--computers and communications--it is feasible and cost effective to rapidly and efficiently move large volumes of data across national boundaries providing instant access regardless of distance. The terms "transnational..." or "trans-border data flow" reflect this international setting. Because the data is machine-readable as opposed to human readable, it is no longer readily subject to review and/or control.

The data being transmitted vary widely in information content: airline information which includes seat and hotel reservations; freight shipping arrangements; banking and credit information; individual tax information; corporate data for production, management control, marketing, personnel, capital expenses and investment; bibliographic data including the description of the publishing output of many countries and the citations for information in particular disciplines; statistical data such as national census and production information; full text data such as LEXIS files which contain statutory and judicial data; and a host of other data spanning the current social and economic activities of man.

A recent study of European data networks[1/] defined four basic objectives for the establishment of international communications as:

1. Indirect financial benefits gained by multinational corporations achieving economies through rapid international coordination of production, marketing and financial management.

2. Direct financial benefits from sharing expensive resources such as computers.

3. Management of inherently international activities such as airline reservations and international money exchange.

4. Coordination and cooperation such as multinationals assisting subsidiaries in different countries to coordinate their activities.

The above obviously relates to international trade. However, the IFLA-sponsored programs of Universal Bibliographic Control, Universal Availability of Publications, and International MARC can readily fulfill similar objectives in the area of sharing of bibliographic information and bibliographic items.

The above four points could be stated as:

1. Indirect financial benefits gained by the bibliographic agencies achieving economies in research through increased access to information.

2. Direct financial benefits from shared cataloging and materials lending.

3. Management of inherently international activities such as the International Serials Data System and the MARC International Program.

4. Coordination and cooperation such as in the International Standard Book Number program.

At present, the principal concerns of transnational data flow are:

1. Individual privacy rights--personal information which is protected in one country is transmitted to other countries where laws are less stringent.

2. Data security--data which is transmitted to one or more countries and subject to different security and communica-

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tions standards and different licensing agreements are vulnerable to additional risks of unauthorized use and physical damage.

3. National sovereignty--data emanating from a country with a lack of technical capability is processed in another country, with the possibility that (a) the data may not be available to the originating country, (b) sensitive information may be made available outside the originating country, and (c) the originating country lacks control over manipulation of the data and is therefore dependent to a degree upon the other country.

4. Exportation of highly skilled positions--processing of data outside of the originating country may result in the involuntary export of skilled positions which would otherwise be established in the originating country, thus seriously impacting its economy.

Although the above considerations may appear to be remote from the present concerns of libraries, this is in fact not so. Libraries are not merely storehouses of information, but are organizations attempting to provide a vast array of services to their highly diversified clientele, such as access to news services, census information, legislative information, and research of all kinds, as well as the more traditional biblio-

graphic and indexing services. These services are available through telecommunications and will be impacted by the problems of transnational data flow.

Eighteen countries have either adopted or have under consideration laws which will restrict in varying degrees the flow of data across national borders. To date, most of the laws attempt to limit the free flow of data to provide economic or civil rights protection for the citizen.

Few would contest the validity of protecting the individual person--the problem is that some of the national laws use the term "legal person" as opposed to "natural person" and that may include, in addition to people, a corporate entity or national entity and may encompass information services used by libraries. It is these differences in legislation that clearly point toward the need for international agreement to resolve present conflicts and to prevent further limitation of the free flow of information through barriers imposed by national laws. The Council of Europe and the Organization for Economic Cooperation and Development have been actively involved in furthering efforts toward such international agreement. Individual countries may have to pass enabling legislation to permit them to participate in such international agreements.

Transnational communications are also affected by the question of ownership of information in shared computer-based systems. At present,

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copyright law protects authors and publishers from plagiarism and unauthorized copying. However, the law is still unclear with respect to the rights of ownership in shared computer-based systems. To further complicate the issue, the question of ownership arises both when information is subject to copyright and when it is not subject to copyright. For example, a national bibliography in machine-readable form may be copyrightable. On the other hand, unrelated bibliographic records may not be copyrightable. In both cases, there may be a problem of who owns the record and that problem is ultimately an economic one.

In some computer-based library systems, where cataloging data is input into a single system by many organizations and the cataloging records comprising the data base are shared by all the participating members, the problem of ownership exists even though there have been no claims to copyright. Does an individual record belong to the organization that input the record? Does a record input by one organization belong to another organization which pays for and uses the same record from a shared system? Or does the record input belong to the organization that controls the system? In other systems the design permits a member library to limit access to its file to its own staff and to staff of other libraries that are parties to an inter-organization arrangement. Files are organized on either an individual library basis or as a single union file for a group of libraries. In either case, certain data, such as the MARC files from national bibliographic agencies, are considered resource data to be used by any organization and to be incorporated into its private file.

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In both of the above cases, what exactly is meant by "belong"? Does ownership mean the license to use the record in any way, including resale or give away, or is the concept of ownership subject to certain restrictions?

If, for example, an organization would choose to discontinue its use of one system and join another system, would it be permitted to copy its machine-readable records and have them stored in the new system? The implications are that the users of the second system, in paying a fee for the use of such records to the second system, would cause loss of revenue to the first system. Such problems are now surfacing as the result of national and international networking. There are as yet no solutions.

A combination of the problems of ownership of both records that are copyrightable and records that are not copyrightable has developed internationally during the past several years. Since 1969 we have witnessed the implementation of many national MARC systems. It was quickly recognized that national MARC records representing cataloging data for the publishing output of each country could usefully be exchanged as one principal component of Universal Bibliographic Control. National agencies began to make bilateral arrangements covering the conditions for the exchange of MARC data via magnetic tape. Because of differences in copyright laws and practices in the various bibliographic agencies, the exchange agreements

vary. For example, the Library of Congress MARC records are not covered by copyright law and the Library is not concerned with any exclusive arrangements for its tape distribution services; the National Library of Canada's publication Canadiana is covered by copyright law, but the National Library of Canada chose not to exercise copyright protection in the distribution of these records in machine-readable form in its agreement with the Library of Congress. On the other hand, the British National Bibliography (now incorporated into the British Library) is concerned with maintaining some control over the distribution of its MARC records. The result of these differences is that each exchange agreement may be unique. For example, the Library of Congress' agreement with the National Library of Canada differs from its agreement with the British Library. The basic problem appears to be that some of the national agencies involved in the production and distribution through sale of national bibliographies are concerned that, since the MARC records represent records that are in the national bibliography, the bibliogrpahy could be published by another organization. In addition, since in many of the national bibliographic agencies it is planned (in some cases already implemented) to provide an online service for the distribution of MARC records, there is concern as to whether an online service would be economically viable if the records were available to their competition. The Conference of Directors of National Libraries,[2/] recognizing the worldwide impact of this evolving international MARC network, decided in 1975 to give high priority to the consideration of an efficient and effective network.

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A Steering Committee was appointed and recommended a study to include both bibliographic and technical problems of an international system. The report of that study[3/] included a recommendation for the establishment of an international exchange policy which would include a universally acceptable agreement among national bibliographic agencies to cover the distribution and use of MARC records. The Steering Committee, with contractual support, formulated such an agreement. The significant provisions of the agreement are:

1) the exchange of bibliographic records involves no financial charge imposed by either organization;

2) each organization may use the other's MARC records as is or may modify records as needed;

3) the originating organization which is a copyright holder agrees that any of its records which have been modified to meet national bibliographic standards of the receiving organization are not subject to copyright;

4) records not modified to accord with national bibliographic standards of the receiving organization may be distributed within the country of receipt to not-for-profit organizations; supply of these records to profit-making organizations is

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permitted but is subject to contractual arrangements made between the originating organization and the profit-making organization concerned;

5) the receiving organization agrees not to produce the national bibliography of the originating organization.

During the Steering Committee meeting in London in May 1979, the decision was made to forward the agreement to the Conference of Directors of National Libraries for its approval during this IFLA session and to give wide distribution to a published document which includes the background of the agreement and the agreement itself. This agreement is a landmark accomplishment toward the goal of the free flow of information.

The increased cost of resources and the general lack of funding to meet the increased costs, all too familiar topics of the past decade, have resulted in the acknowledged need among bibliographic agencies for sharing or networking, and the technology has provided a possible solution. At the same time that the technical feasibility of resource sharing has been established, with the capability of providing wider access to a greater number of information resources for a larger number of users, laws are being passed to inhibit the free flow of this information. I recommend that IFLA, through the Section on Mechanization of the Division of Management and Technology, participate actively in international

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conferences, working groups, etc., on trans-border data flow, to promote on behalf of IFLA the development of international communications laws that will guarantee the free flow of information for the benefit of all.

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2. The Conference of Directors of National Libraries, originally called the International Association of National Librarians, was organized in 1975 to discuss the problems of national libraries with an aim to provide solutions. This body is now incorporated within the IFLA structure.

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